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9442.1994(06)

United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

July 29, 1994

Ms. Karen Sahler
Environmental Committee
New York Gas Group
500 Fifth Avenue, Suite 428
New York, New York 10110-0469

Dear Ms. Sahler:

In your letter to Michael Shapiro of May 17, 1994 you requested EPA assistance in determining the regulatory status of natural gas regulators that contain mercury under the Resource Conservation and Recovery Act (RCRA). You write that you believe that these regulators meet the definition of a scrap metal (see footnote 1). You also correctly point out that scrap metal is exempt from regulation when reclaimed. 40 CFR §261.6(a)(3)(iii). You have asked EPA whether natural gas regulators meet the definition of a scrap metal so that NYGAS members would not have to manage these materials as solid wastes and hazardous wastes when sent for reclamation.

EPA cannot concur with this interpretation. Since your letter states that the natural gas regulators contain mercury, these regulators cannot be scrap metal. When EPA revised the definition of solid waste in 1985, it created a new category of secondary material in the final rule, scrap metal. 50 FR 614, 624 (January 4, 1985). In setting up this new category, EPA stated "Materials not covered by this term include ... liquid metal wastes (i.e., liquid mercury) [emphasis added]..." 50 FR at 624. The argument that the regulator taken as whole unit is mostly metal and does not contain a "significant liquid component" is inapplicable here. In general, any quantity of liquid mercury other than trace amounts attached to or contained in a spent material precludes that material from being a scrap metal.

In addition, EPA agrees with the New York State position that used equipment of this type cannot be considered to be a commercial chemical product. Based on our understanding of this material, we believe that when removed from service, natural gas regulators



containing mercury best meet the definition of a spent material. 40 CFR §261.1(c)(1). Therefore, the regulators are solid wastes and hazardous wastes when sent for reclamation. 40 CFR §261.2(c)(3). These natural gas regulators would be subject to applicable RCRA Subtitle C regulations, 40 CFR Parts 262-265, 268 and 270.

Although these mercury-bearing natural gas regulators cannot be regulated as scrap metal, the natural gas regulator may meet the definition of a scrap metal and be exempt from regulation once the mercury component is removed from the regulator (provided it does not contain other liquids and otherwise best meets the definition of scrap metal). Also, you may wish to consider petitioning the Agency to include these regulators as part of the proposed Part 273 Special Collection System regulations when these regulations become final. If included in the Part 273 regulations, these regulators could be shipped under reduced Subtitle C regulatory requirements (e.g., a manifest would not be required). EPA requested comment on the potential usefulness of Part 273 regulations to mercury-containing thermostats in the proposed rule. 58 FR 8102, 8110 (February 11, 1993).

Please be aware that under Section 3006 of RCRA (42 U.S.C. Section 6926) individual States can be authorized to administer and enforce their own hazardous waste programs in lieu of the Federal program. When States are not authorized to administer their own program, the appropriate EPA Regional office administers the program and is the appropriate contact for any case-specific determinations. Please also note that under Section 3009 of RCRA (42 U.S.C. Section 6929) States retain authority to promulgate regulatory requirements that are more stringent than Federal regulatory requirements.

I hope that this letter sufficiently responds to your questions and concerns. If you have any further questions or comments, please contact Paul Borst of my staff at (202) 260-6713.

Sincerely,

David Bussard, Director
Characterization and Assessment Division

1 "Scrap metal" is bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad boxcars) which when worn or superfluous can be recycled. 40 CFR §261.1(c)(6).

Attachment

New York Gas Group
500 Fifth Avenue, Suite 428
New York, New York 10110-0469

Environmental Committee
New York Gas Group
500 Fifth Avenue, Suite 428
New York, New York 10110-0469

May 17, 1994

Mr. Michael Shapiro
Director
Office of Solid Waste and Emergency Response
United States Environmental Protection Agency
401 M Street S.W.
Washington, D.C. 20460

Dear Mr. Shapiro:

The New York Gas Group ("NYGAS") wrote to you on December 22, 1993, to request your assistance with an issue under the Resource Conservation and Recovery Act ("RCRA").

NYGAS has been working with the New York State Department of Environmental Conservation ("NYSDEC") to determine the appropriate classification under RCRA for natural gas regulators; devices to reduce and regulate the flow and pressure of natural gas to the consumer. As we stated in our previous letter, some natural gas regulators contain small amounts (approximately 2 ounces) of mercury to regulate the flow of natural gas. The mercury is located in a small cup in the interior bottom of the regulator. The regulator itself is metal with some gasket and diaphragm materials.

In our December 22 letter we noted that in the past, NYSDEC had characterized the regulator as a non-hazardous waste when removed from service and had regulated the mercury within as a separate commercial chemical product. This interpretation changed, and in a letter to the Long Island Lighting Company dated May 7, 1993, NYSDEC concluded that when EPA published its proposed "Universal Waste" rule in February 1993, "it became apparent to us that this policy would be inconsistent with EPA's position that the mercury in used equipment does not qualify as a commercial chemical product" and that "for the present we must consider used equipment to be spent material, and subject to the hazardous waste regulations whenever the unit fails the Toxicity Characteristic."

In our previous letter, we asked whether EPA would allow NYSDEC to reinstate the earlier policy of regulating the mercury as a commercial chemical product. We also brought to your attention an

alterative approach adopted by USEPA Region I that the used, but still functional equipment is not a "spent material".

After further discussions with NYSDEC, we have concluded that there is an approach in the regulations which allows the members of NYGAS to reclaim the regulators without having to manage the equipment as hazardous waste, and which also avoids the necessity of deciding whether the regulators are "spent" or if the mercury within the regulators qualifies as a "commercial chemical product." Specifically, the regulators qualify as "scrap metal" within the meaning of 40 CFR §261.1(c)(6) (and the comparable NYSDEC definition) and are exempt from regulation when reclaimed pursuant to 40 CFR §261.6(a)(3)(iv).

By definition the category of scrap metal encompasses manufactured metal goods such as radiators, automobiles and railroad box cars, 40 CFR §261.1(c)(6), and the definition has been applied to other manufactured goods, such as used naval torpedoes (reference letter dated February 25, 1986 from Marcia Williams to Christian Valz [9441.1986(14)]). "Put another way, scrap metal is defined as products made of metal that ... are recycled to recover their metal content." 50 Fed. Reg. 614, 624 (January 4, 1985). Wastes consisting entirely of liquid metals, such as mercury, or of products with a significant liquid component, such as spent batteries, are not regarded as "scrap metal" (50 Fed. Reg. 624); however, metal products which do not contain large amounts of liquid are regarded as scrap metal. Automobiles are a prime example. Scrap automobiles contain oil and other automotive fluids as well as non metallic materials, nevertheless, an automobile is defined as "scrap metal".

Natural gas regulators are metal products (approximately 15-20 pounds) which contain some non-metallic parts and a small amount of liquid mercury (approximately 2 ounces). Based on the precedent established with respect to automobiles, radiators, torpedoes and other metal goods and equipment, we believe the used regulators are "scrap metal" and are presently exempt from regulation in accordance with 40 CFR §261.6(a)(3)(iv).

Thus, even assuming the used regulators are a "spent material" which exhibit a characteristic of hazardous waste due to the presence of mercury, and that the mercury has lost its status as a "commercial chemical product", the regulators are scrap metal which are not currently subject to regulation.

NYSDEC has indicated to us that it may be willing to apply the State's comparable exemption for recycled scrap metal to our situation, if NYGAS obtains confirmation from EPA that the regulators would qualify as scrap metal under the Federal regulations.

In lieu of a response to our letter of December 22, 1993, the members of NYGAS urgently request your immediate assistance in this matter in order to eliminate the uncertainty inhibiting the replacement of our equipment.

Please feel free to call me at 716-724-8684 with any questions or concerns; I look forward to receiving your written response. Thank you in advance for your time and assistance.

Very truly yours,

Karen Sahler
Environmental Committee,
NYGAS

cc: Steven Silverman, Esq., USEPA
Mitch Kidwell, USEPA
Lawrence J. Nadler, NYSDEC
William Yeman, NYSDEC
NYGAS Environmental Committee
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